

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3594 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

GOVINS A. GADHAVI

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:

MR DM THAKKAR for Petitioner
MR KN RAVAL for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 11/02/2000

ORAL JUDGEMENT

The petitioner seeks a direction on the respondent to properly fix his pay in the pay scale of Rs. 190-919 on the basis that he was ordered to be reinstated by order dated 18.3.1986 passed by the learned Assistant Judge, Junagadh, in Civil Appeal No. 125 of

1983 with a declaration that he continued to be in service, though he was not to be paid backwages. The order of his reinstatement dated 9.7.1986 has been placed on record by the learned counsel for the petitioner. Earlier only excerpts of the orders were annexed to the petition at Annexure-A. This order of reinstatement shows that the petitioner's salary was fixed in the pay scale of Rs. 190-919. Earlier the scale was Rs. 190-504 and it is recorded in the order that the petitioner was being reinstated without backwages and his pay was fixed at Rs. 386/- as per the settlement of 1982 and on reinstatement i.e. on 2.6.1986 it was fixed at Rs. 386/-. The intervening period between the date of dismissal and reinstatement was treated as leave without salary.

It is clear that from the specific order of the appellate court that the petitioner was entitled to reinstatement without backwages. However, there was a declaration that he would be deemed to have continued in service. The point in controversy that emerged during the arguments was that though the petitioner was not entitled to backwages, in view of the continuity in service, whether his increment should have been computed for fixing the pay in the said pay scale. The learned counsel for the petitioner argued that because he was declared to be continued in service, the increments ought to have been taken into account while the learned counsel for the respondents argued that there was no such direction given in the order of the appellate court and, if at all the petitioner had such claim, he should have filed execution proceedings on the basis of the appellate order and not approached this court under Article 226 of the Constitution of India. It was argued on behalf of the respondents that in the past under orders dated 31.7.1972, 16.8.1973, 30.6.1987 and 30.8.1988 punishments were imposed on the petitioner with stoppage of his increments, some with future effect and some without future effect.

It does appear from the order reinstating the petitioner that while rightly not giving the backwages in view of the specific directions contained in the appellate order and stating that he was given continuity in service the element of increments which would have become due had his services been treated as continuous has been totally omitted. Continuity of service would obviously mean that his increments as and when due should be released, but he would not be entitled to backwages on the basis of such accrual. However, from the date of his reinstatement, he would be entitled to be fixed in the

pay scale, at the pay reached, on the basis of such calculation taking into account the increments that may have fallen due in the interregnum period, otherwise, the concept of giving continuity would become illusory. The additional amount that he would have got would also be lost to him because no backwages were to be paid for the period prior to the reinstatement. However, for the period after the reinstatement the fixation of pay ought to have reflected increments which have become due. There can be no dispute about the fact that if there were orders regarding stoppage of increments which had become final they would also have to be taken into consideration, while fixing up the pay of the petitioner in the pay scale, taking into account the increments that might have fallen due during the period for which he is not to be given backwages, for the purpose of working out the pay that he would be entitled to get on his reinstatement. The petition therefore partly succeeds. The respondent is directed to refix the pay of the petitioner in the pay scale which is referred to in the order of reinstatement on the basis of his continuity in service taking into account the increments which might have been fallen due during the period before his reinstatement without paying any backwages till the date of reinstatement and only with a view to working out what he would be entitled to get after the date of reinstatement on the basis of such refixation. It will be open for the respondents also to give effect to any orders of stoppage of increments, which might have bearing on such refixation. Rule is made absolute accordingly with no order as to costs.

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